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## RESPONDENTS.

**Judge Charneski**

## CONSENT AGREEMENT

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency Region 5, and Respondents, EK Associates, L.P. and EK Management Corp., Jackson, Tennessee (collectively, "Ekco"), consent to the entry of this Consent Agreement and Final Order.

## PRELIMINARY STATEMENT

1. U.S. EPA initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, found at 40 C.F.R. part 22 and subsequently amended, by filing an administrative Complaint dated June 30, 1994.

2. The Complaint alleges in Count I that on November 4, 1993, Ekco failed to operate the cold cleaning degreasers at its bakeware refurbishing and refinishing facility located in Rockdale, Illinois according to federal implementation plan ("FIP") for the Chicago area for the control of volatile organic compounds, found at 40 C.F.R. § 52.741(d).

3. Count II alleges that Ekco failed to certify compliance with the requirements of the Chicago FIP as required by 40 C.F.R. § 52.741(e)(6)(ii)(A) for the period of August 31, 1992, through May 19, 1994.

4. Count III alleges that Ekco failed to keep and maintain records of its coating operations at its Rockdale, Illinois, facility according to the requirements of 40 C.F.R. § 52.741(e)(6)(ii)(B).

5. Count IV alleges that Ekco applied a coating which failed to comply with the requirements of 40 C.F.R. § 52.741(e)(1)(i) for the period August 31, 1992, through May 19, 1994.

6. The Complaint concludes that Ekco's violations of the Chicago FIP subject Ekco to a civil penalty of \$181,923, pursuant to the Administrator's authority found at section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the statutory factors found at section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). During the course of this proceeding, Complainant amended the Complaint to withdraw count III and reduce the proposed penalty to \$151,622.

7. The Presiding Officer convened an evidentiary hearing in this matter on August 14, 1997, in Chicago, Illinois, and issued an Initial Decision on June 15, 1998. The Initial Decision found Ekco liable for Counts I and IV of the Complaint and dismissed count II because the Presiding Officer found that U.S. EPA had not conformed to the requirements

of the Paperwork Reduction Act. The Initial Decision further assessed a penalty against Ekco of \$86,107. U.S. EPA filed a notice of appeal of the Initial Decision on June 6, 1998, requesting that the Environmental Appeals Board reverse the Presiding Officer's dismissal of Count II of the Complaint and provide a more thorough analysis of his penalty determination. The EAB issued its decision on June 22, 1999, which reversed Count II of the Complaint and remanded the case to the Presiding Officer to determine liability and an appropriate penalty for Count II and to provide a more extensive penalty rationale for Counts I and IV of the Complaint.

#### **TERMS OF SETTLEMENT**

8. For the purposes of this proceeding, and according to 40 C.F.R. § 22.18(b), as amended at 64 FR 40138 (July 23, 1999), Ekco: (1) admits that the U.S. EPA has jurisdiction over the subject matter alleged in the Complaint; (2) neither admits nor denies the findings of fact and conclusions of law contained in the Complaint; and (3) consents to the terms of this Consent Agreement and Final Order.

9. Ekco certifies that it was in compliance with the Chicago FIP and all relevant portions of the Illinois state implementation plan at its facility in Rockdale, Illinois, at the time of Ekco's sale of Rockdale facility in March of 1998.

10. This Consent Agreement and Final Order settles the civil violations alleged in the Complaint.

11. Upon execution of the Final Order attached hereto, Ekco waives all rights to contest the allegations set forth in Counts I, II or IV of the Complaint, including, but not limited to, its right to request a hearing under section 113(d)(2)(A) of the CAA, 42 U.S.C.

§ 7413(d)(2)(A), and its right to appellate review of the attached Final Order found at section 309(d)(4) of the CAA, 42 U.S.C. § 1319(d)(4).

12. Pursuant to section 113(d)(2)(B) of the CAA, 42 U.S.C. § 1319(d)(2)(B), based on Ekco's good faith in resolving this matter and other factors as justice may require, Complainant agrees to mitigate the proposed penalty of \$151,622. Ekco, therefore, will pay the United States of America a civil penalty of \$100,000. Ekco must pay the civil penalty by certified or cashier's check within 30 days after the effective date of this Consent Agreement and Final Order. Ekco must make the check payable to the "Treasurer of the United States of America" and remit it to U.S. EPA Region 5, Box 70753, Chicago, Illinois 60673. Ekco must mail a copy of the payment check to each of the following: Regional Hearing Clerk, (R-19J); Branch Secretary, Air Enforcement Branch, (AE-15J); and Robert S. Guenther, Associate Regional Counsel, (C-14J). The address for each of the above is: U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

#### **OTHER MATTERS**

13. Nothing in this Consent Agreement and Final Order relieves Ekco of the duty to comply with the CAA or other federal, state or local laws or statutes.

14. This Consent Agreement binds both parties to this action, their successors and assigns. The representative of each party signing this Consent Agreement certifies that he or she has authority to enter into the terms of this Consent Agreement and bind that party to it.

15. Ekco's failure to comply with paragraph 12 will result in referral of this matter to the U.S. Department of Justice for collection.

16. Interest shall accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Ekco shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Ekco shall pay a quarterly nonpayment penalty each quarter during which a penalty is overdue according to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). This nonpayment penalty shall be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

17. Each of the parties agrees to bear its own costs accrued in the course of this action.

**EK ASSOCIATES, L.P., and  
EK MANAGEMENT CORP.  
RESPONDENTS**

Dated: 11/10/99

By: Jonathan Dunn  
Their: CEO of EK Management Corp, which is the  
General Partner of EK Associates LP

**U.S. ENVIRONMENTAL PROTECTION AGENCY,  
COMPLAINANT**

Dated: 11/30/99

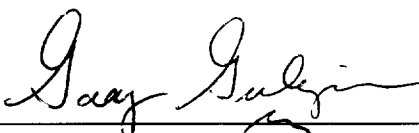
By: Margaret M. Gueriero  
MARGARET M. GUERIERO, Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
Chicago, Illinois

In the Matter of:  
EK Associates, L.P., d/b/a Ekco/Glaco, and  
EK Management Corp.,  
Docket No. 5-CAA-95-012

**FINAL ORDER**

I approve the preceding Consent Agreement and incorporate it by reference into this Final Order. I order EK Associates, L.P., and EK Management Corp., Jackson, Tennessee, to comply with the terms of the preceding Consent Agreement, effective immediately upon filing of this Final Order with the Regional Hearing Clerk.

Dated: 12/1/99

  
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FRANCIS X. LYONS  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
Chicago, Illinois

REC

Docket Nos. 5-CAA-95-012

CERTIFICATE OF FILING AND MAILING 54

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Consent Order (CACO), to EK Associates, L.P., d/b/a Ekco/Glaco, and EK Management Corp., was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; and that a second original of the CACO was sent by Certified Mail, Return Receipt Requested, to:


Jacqueline Vidmar, Esquire  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6404

I also certify that copies of the CACO were sent by first class mail to:

Harish Narayan, Acting Regional Manager  
Region 1  
Illinois Environmental Protection Agency

David Kolaz, Chief  
Compliance and Systems Management Section  
Bureau of Air  
Illinois Environmental Protection Agency

on the 2nd day of December, 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN)

Certificate Numbers: 7140895485